



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Proposed Lease for Golf Driving Range at DeBenedetti Park Site

MEETING DATE: May 18, 1994

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration and possible approval of a five year lease.

BACKGROUND INFORMATION: For the past few months, negotiations have been ongoing between the City and Mr. Kenneth Choo for operation of a proposed golf driving range at the DeBenedetti Park site. As you may recall, the Council previously terminated Mr. Choo's lease for a similar operation at the Grape Festival Grounds on East Lockeford Street because of safety concerns. Thereafter, the Council felt it appropriate to consider allowing Mr. Choo to move his operation to a different City-owned location.

The attached draft lease encompasses the general concerns expressed by both sides. The five year term is nonrenewable except by mutual consent. If at the end of that period, the City wishes to allow the operation to continue, Mr. Choo will have the first right of refusal for the additional period.

Council direction is requested on the amount of rent under the lease. With the previous operation at the Grape Festival Grounds, Mr. Choo paid a set percentage of ball rental to the City, plus a flat monthly amount. However, the City provided in return all utilities and mowing, which were valued at approximately the same amount as the flat monthly portion of the rent. Under the proposed lease, the City will not be responsible for utilities or mowing, and so the Lessee has requested that he pay only the percentage of ball rental, and that there be no flat monthly component to the total rent.

All other provisions of the proposed lease are similar to the previous agreement with Mr. Choo, and have been reviewed by Parks & Recreation, Public Works and Community Development Departments.

Council consideration and direction is requested.

FUNDING: Not applicable

Respectfully submitted,

Bob McNatt
City Attorney

BM:pn

APPROVED
CCDEBENE.PRK/TXTA.01V

THOMAS A PETERSON
City Manager



CITY OF LODI AND KENNETH CHOO AGREEMENT
LEASE AGREEMENT TO OPERATE GOLF DRIVING RANGE
July 1, 1994 to June 30, 1999

AGREEMENT

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THIS AGREEMENT, made and entered into this day of , 1994, by and between the CITY OF LODI, a municipal corporation ("City"), and KENNETH CHOO ("Operator").

W I T N E S S E T H:

City hereby grants to Operator the exclusive right to operate a Golf Driving Range and related facilities located on that parcel of land commonly referred to as DeBenedetti Park, more particularly described on the map attached hereto which is incorporated by reference, for a term of five years, beginning July 1, 1994 and terminating at midnight June 30, 1999, on the following terms and conditions.

(1) LOCATION AND DESIGN: The driving range, to be installed at the expense of operator, on the parcel described above shall be done consistently with the concept plan attached hereto as Exhibit B, subject to the final approval of the Lodi City Council.

(2) Term: This lease shall be for a period of five (5) years, and shall be non-renewable except by mutual agreement. However, Operator shall have the right of first refusal if the City desires to allow continued use of the premises for a driving range, subject to negotiation of rent, terms and conditions.

(3) RENT: Operator shall pay to City ten percent (10%) of the gross ball rental revenue payable on or before the tenth day of each month following commencement of range operation, together with a service charge of five percent (5%) for any amounts not paid when due and payable. [It still remains to be decided whether or not Lessee shall also pay a monthly rental in addition to the percentage of gross ball rental income. It has been suggested that the lease commence at Two Hundred an Fifty Dollars (\$250.00)]

per month and every twelve months thereafter increase by Fifty Dollars (\$50.00), meaning \$300.00 in 1995, \$350.00 in 1996 etc.] Should any other operation or activity become part of such driving range, it shall require the approval of City, and shall be subject to a rental increase to be negotiated based on the nature of the activity.

(4) RECORDS: Operator shall keep and maintain accurate records and books of all accounts and receipts and disbursements, and hereby gives to City or its authorized agents the right to examine or audit such records or books at any reasonable time. Operator will complete monthly records on forms provided by the City, which must accompany gross receipts payments.

(5) IMPROVEMENTS: Operator shall install and be responsible for all costs associated with and appropriate design and plan approval for the following improvements:

- a) Perimeter fencing along north and south boundaries of the range area forty feet (40') in height and perimeter fencing on the east boundary thirty feet in height at original ground level;
- b) Perimeter night lighting as mutually agreed, which shall be of a type and location approved by Community Development/Parks and Recreation staff and Operator.
- c) A mobile modular unit approximately 24 x 48 feet, with self-contained sanitary facilities of a type adequate for golf range operations, as mutually agreed upon between City and Operator. The unit shall be used as a clubhouse and range operation facilities.
- d) Paved parking lot for eighteen (18) automobiles with additional parking area for twenty-six (26) automobiles, to be oiled, in such location as designated on the concept plan and as otherwise approved by the Public Works Department.

- e) Irrigation water to be provided by above ground plastic line from the City's water main to the northeast corner of the subject parcel.

Pipeline and meter installation shall be at City's expense; all other irrigation facilities shall be Operators responsibility. Irrigation water to be metered and paid by Lessee as used.

- f) Operator shall provide bottled drinking water at the modular clubhouse described above.
- g) Electric power will be provided by PG&E from their existing facilities west of Lower Sacramento Road. Any expenses associated with providing such electricity shall be Operator's responsibility.
- h) The range areaway shall be turfed in keeping with mutually approved plans between City and Operator, and shall include the returfing or reseeding of such area in the event of the expansion of the basin by City.
- i) All signage associated with the driving range shall be approved beforehand by City.
- j) Those offsite improvements which would normally be required for permanent installations, including street improvements, water and sewer extensions and street lights are deferred by City for the period of this lease.
- k) City agrees to waive customary fees associated with City Planning Commission approval for Negative Declarations or permits for temporary modular units, if necessary.
- l) Operator shall provide any required mitigating measures identified in such negative declaration.

(6) TITLE TO IMPROVEMENTS: Title to all improvements specified in the preceding section shall vest in Operator, who shall have the duty and obligation to remove such improvements upon termination of this lease.

(7) CONDITIONS OF OPERATION:

- a) Operator may provide food and non-alcoholic beverage service to patrons subject to compliance with all other State and local regulations.
- b) Operator shall have sole and exclusive obligation for all maintenance on the leased parcel with the improvements thereon including mowing, turfing, watering, etc. However, Operator agrees that he shall not remove or prune trees, whether damaged or injured, without express written approval of City in advance.
- c) Operator shall provide dust and weed control for any area not seeded to grass or otherwise improved.
- d) Street access approval: Design to be approved by the Public Works Department. No special widening on Lower Sacramento Road shall be required.
- e) All facilities including sanitary facilities shall be maintained by Operator in a neat, clean and sanitary manner.
- f) Operator shall provide and furnish free of charge to patrons necessary golf clubs.
- g) Operator shall post prominently hours of operations. Such hours of operation are to be as agreed upon between the City of Lodi and Operator or his designee.
- h) In the event any litigation is initiated concerning the granting or terms of this lease, by any person other than the

principals to this agreement, Operator shall have the option whether to defend the validity of such matters at his sole expense or to terminate this agreement without further obligation. City shall be under no obligation to defend such litigation at its own cost.

8) RESTRICTION ON OPERATIONS: In the event that City's requirements for the adjacent storm drainage system requires substantial long term intrusion on the range operations during the term of this lease, Operator shall have the option to terminate this lease and be compensated by Lessor on a pro rata basis for actual costs of improvements provided by Operator amortized for the unexpired portion of the lease then remaining. "Substantial intrusion" shall mean significant financial impact on Operators revenues for more than sixty (60) continuous days due to activities of City in connection with the expansion, modification, addition or City maintenance of the demised premises or the adjacent parkland or basin. However, Operator shall have the option of continuing operations during such expansion or work on the drainage basin, in which event Operator accepts all risk of financial loss based on such interference with use.

9) INSURANCE: Operator is required to carry a policy of Comprehensive General Liability insurance in compliance with all of the provisions of the "Risk Transfer Requirements For Lease or Use of City of Lodi Facilities [4/93 (KE)]", attached hereto as Exhibit A and incorporated herein by reference.

10) HOLD HARMLESS: Operator shall save, keep and hold harmless the City of Lodi, its officers, agents, employees and volunteers from all damages, liability, costs or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of operations at the Golf Driving Range. Such indemnity shall include attorney's fees.

11) SUBLETTING: Operator shall not sell, assign nor sublease any rights under this agreement without prior written consent of the City, which shall not be unreasonably withheld.

12) DEFAULT: City shall have the right to terminate and cancel the lease in the event of Operators failure to materially comply with the terms, covenants and conditions herein, including payment of rent as agreed. Any dispute pertaining to such matters shall be settled by arbitration in accordance with the arbitration laws of the State of California then in effect.

13) LIENS: Operator shall keep the property free from all liens encumbrances or obligations of any nature arising either from the installation or improvement of operation at all times during the leased term. Further, Operator agrees that he shall not in any form encumber, hypothecate nor pledge the property demised hereunder for any debt or obligation.

14) SURRENDER & TERMINATION: In the event Operator within forty-five (45) days of the execution date of this lease submits an application for use permit for a Golf Driving Range facility at Harney Lane and West Lane, and diligently pursues such application to a determination with the County of San Joaquin, the date for commencement of Operators improvements shall be extended until that determination is made, but in no event later than July 1, 1994. In the event the County approves such application, Operator shall have the option within ten (10) days thereafter to notify City that this lease is abandoned and terminated and the same shall thereafter be of no further force or effect upon either party. Should Operator receive such approval from the County, no rights under this agreement shall be assignable or transferable in any form whatsoever.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first hereinabove mentioned.

CITY OF LODI,
a municipal corporation

THOMAS A. PETERSON
City Manager

By _____
KENNETH CHOO, Operator

ATTEST:

JENNIFER M. PERRIN
City Clerk

Approved As To Form:

BOBBY W. McNATT
City Attorney

AGRDEBEN.PRK/TXTA.01V

CITY OF LODI

4/93
(KE)RISK TRANSFER REQUIREMENTS
FOR LEASE OR USE OF CITY OF LODI FACILITIES

1. Any individual party or group (hereinafter called Lessee) leasing, renting or otherwise using City of Lodi facilities, is required to carry a policy of Comprehensive General Liability insurance. If hold harmless language is not contained in an agreement between the City and lessee or in an application to use City facilities, then the lessee must complete an "Agreement Assuming Risk of Injury Damage - Waiver and Release of Claims" form. Processing of applications is handled by the department responsible for the facility or equipment.
2. A duplicate or certificate of insurance shall be delivered to the City prior to use of City facilities, as set forth herein.

NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

"Claims made" coverage requiring the insured's to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

3. Each insurance certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi immediate notice of the cancellation or reduction in coverage of any policy during the effective period of the use of the City's facilities.
4. Each insurance certificate shall state on its face or as an endorsement, the location of and a description of the function that it is insuring.
5. If the City has not received the certificate of insurance within seventy two (72) hours prior to the commencement of any portion of the function, the City's facilities will not be allowed to be utilized, and any contract or agreement entered into will become null and void.
6. Provided the lease agreement or contract does not prohibit a subtenant, all provisions of these requirements shall apply to and be construed as applying to any subtenant of the Lessee.
7. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Risk Transfer Requirements, continued

8. In each and every instance, the City of Lodi must be named as an additional insured on the face of the insurance certificate or as an endorsement attached to the certificate of insurance. (THE CITY OF LODI MUST BE NAMED THE ADDITIONAL INSURED, NOT HUTCHINS STREET SQUARE, PARKS AND RECREATION, OR OTHER INDIVIDUAL OR DEPARTMENT.)
9. The address of the City of Lodi must be shown along with No. 8 above, i.e., Additional Insured, City of Lodi, 221 West Pine Street, Lodi, California 95240.
10. In addition to the Additional Named Insured Endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
11. The combined single limits for bodily injury and property damage shall not be less than \$1,000,000 each occurrence. If alcohol is to be consumed or sold at the Lessee's event, then liquor liability coverage must be provided.
12. The Policy effective date and expiration date must coincide with and span the date(s) of the event being insured.
13. If the limits of coverage are not the amounts specified in Section 10 and 11 above, and/or if the City is not named as an additional insured on the certificate of insurance, and/or if the certificate is a "claims made" certificate, not in conformance with the requirements of Paragraph 2 above, the City will not accept the certificate of insurance, and a corrected certificate of insurance must be furnished to the City prior to any use of any City facility.
14. If a correct insurance certificate and "Agreement Assuming Risk of Injury Damage" is not received by the City of Lodi at least 72 hours prior to the use of the City facilities, the City will not allow the City facilities to be used, and any agreement or contract entered into will become null and void.